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promoting integrity

evaluating and improving public institutions

edited by

Brian W. Head, A.J. Brown and Carmel Connors

PROMOTING INTEGRITY

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Promoting Integrity
Evaluating and Improving Public Institutions

Edited by

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List of Abbreviations

ACC	Australian Crime Commission
ACC	Anti-Corruption Commission
ACLEI	Australian Commission for Law Enforcement Integrity
ADT	Administrative Decisions Tribunal
AEC	Australian Electoral Commission
AFP	Australian Federal Police
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
ANU	Australian National University
APS	Australian public Service
APSC	Australian Public Service Commission
AS	Australian Standard
AS/NZS	Australian and New Zealand Standards
ASSA	Australian Survey of Social Attitudes
ASX	Australian Stock Exchange
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reporting and Analysis Centre
AWB	Australian Wheat Board
BISA	Business Integrity Systems Assessment
CAC	Commonwealth Authorities and Companies
CCC	Corruption and Crime Commission
CEO	Chief Executive Officer
CFMS	Centre for Fraud Management Studies
CFO	Chief Financial Officer
CISCR	Centre for Investigative Studies and Crime Reduction
CJC	Criminal Justice Commission (formerly Crime and Misconduct Commission)
CLERP	Corporate Law Economic Reform Program
CMC	Crime and Misconduct Commission
CPI	Corruption Perception Index
CSR	Corporate social responsibility
DAEO	Designated Agency Ethics Official
DFAT	Department of Foreign Affairs and Trade
DOFA	Department of Finance and Administration
DPP	Director of Public Prosecutions
EARC	Electoral and Administrative Review Commission
ECP	Enhanced Cooperation Program
ERC	Ethics Resource Center (Washington)
EU	European Union
FAO	Food and Agricultural Organization

FATF	Financial Action Task Force
FMA	Financial management and accountability
FOI	Freedom of information
GAO	Government Accountability Office
GDP	Gross domestic product
GOC	Government owned corporation
GRECO	The Council of Europe's Group of States against Corruption
HoCOLEA	Heads of Commonwealth Law Enforcement Agencies
IAT	Integrity Assessment Tool
ICAC	NSW Independent Commission Against Corruption
ICG	Integrity Coordinating Group
IDP	Internal Disclosure Procedures
IMF	International Monetary Fund
KCELJAG	Key Centre for Ethics, law, Justice and Governance
KICAC	Korean Independent Commission Against Corruption
MAB	Management Advisory Board
MAF	Management Accountability Framework
MBA	Master of Business Administration
MCA	Millennium Challenge Account
MIAC	Management Improvement Advisory Committee
MLA	Member of the Legislative Assembly
MNC	Multinational corporations
MP	Member of Parliament
NBES	National Business Ethics Survey
NGO	Non-government organization
NIS	National Integrity System
NISA	National Integrity System Assessment
NSW	New South Wales
OECD	Organisation for Economic Cooperation and Development
OFC	Offshore Financial Centres
OFF	Oil-for-Food Programme
OGE-PR	Office of Government Ethics of Puerto Rico
OPI	Office of Police Integrity
PIC	Police Integrity Commission
PNG	Papua New Guinea
PSHRMAC	Public Service Human Resource Management Agency of Canada
PWC	PricewaterhouseCoopers
QCC	Queensland Crime Commission
RAMSI	Regional Assistance Mission to Solomon Islands
RMIT	Royal Melbourne Institute of Technology
ROSC	Reports on the Observance of Standards and Codes
SA	South Australia
SCC	Sydney Chamber of Commerce
SME	Small to medium enterprises
SSC	State Services Commission (New Zealand)

TAFE	Technical and Further Education
TBS	Treasury Board of Canada Secretariat
TI-CIR	Transparency International Centre for Innovation and Research
UK	United Kingdom
UN	United Nations
UNGAP	Global Programme against Corruption
US	United States of America
USOGE	United States Office of Government Ethics
WA	Western Australia
WEA	Wheat Export Authority

PART 1
Understanding Integrity Systems

Chapter 1

Introduction: Integrity Systems and Democratic Accountability

A.J. Brown, Brian W. Head and Carmel Connors

A Revealing Glitch in the Integrity System

The nine Attorney-Generals of a modern, industrialized, federal democracy met to consider a specific legal reform intended to boost public integrity. The national Attorney-General proposed there should be uniform law reform across the country to protect journalists from being prosecuted for contempt of court if they refused to name a confidential source while giving evidence in a criminal trial. It was not in the public interest, the nation's senior justice minister argued, for journalists to face criminal penalties for honouring their professional ethics, in a situation where a free and independent media could not be effective unless it could promise confidentiality. Hence, journalists should be able to claim a defence in appropriate cases.

The federal Attorney-General's eight state and territory counterparts, however, representing different parts of the nation, pointed to inconsistencies with other laws (Merritt 2007). Yes, they said, journalists should be able to claim protection from having to reveal a confidential source. But especially in federal law, there was still no protection for the confidential source themselves. For example, if a public official 'blew the whistle' on failures of government, they faced criminal prosecution and up to two years in jail; indeed, the whole issue had arisen because the federal government had recently prosecuted two public servants in this way, one for leaking information about a change in policy on war veterans' entitlements, the other for blowing the whistle on systemic weaknesses in airport security (*The Australian* editorial, 28 March 2007). According to the state ministers, shielding the journalists might be legally impossible if the original disclosure was still criminal, and the public servants could not themselves raise a public interest defence. Most of the nation's state governments had a 'whistleblower protection' law, they said, offering some relief from the situation – but the federal government had none, and in fact seemed determined to prosecute as many whistleblowers as it could find. There seemed to be double standards in giving journalists a 'public interest' defence for their use of sensitive information, but not giving public interest whistleblowers any defence for supplying them with the information. Thus the proposal – which was, and is, a good reform – fell on its face.

This incident, which occurred in Australia in April 2007, reveals some of the complex problems confronting the integrity systems of the average, modern nation. As always, when different ministers from different governments and parties assemble, there was plenty of short-term politics involved. Indeed, several state ministers overlooked that while their own jurisdictions had 'whistleblowing' laws to protect public officials who made public interest disclosures, these did not protect officials who spoke to journalists any more effectively than the federal government, which had none (Brown 2006a, 42–4). On a larger scale, however, the deferral of the plan also shows the difficulty faced by political leaders and policy-makers in keeping an overall view of the systems that are, or should be, in place to protect and promote public integrity, even in developed countries. Many different aspects of politics, policy and law are involved in 'getting it right' when it comes to the institutions and strategies of integrity and accountability – and ensuring all these aspects are in place, and coordinated, is no longer easy. Linked to the Australian debate was the fact that, while some governments had different 'watchdog' bodies to investigate complaints of corruption, others including the federal government had few such bodies. The justice ministers found themselves asking a number of questions of larger importance, alongside the politics of commitment to integrity goals. What are the right institutional settings and strategies for ensuring honesty and accountability in public life? How do these settings and strategies relate to one another, and how do we know what is working and what is missing from the whole complex tapestry?

Thinking about Integrity Systems: The International Background

This book suggests some new answers to these larger questions, relevant not just in Australia but in all countries where public integrity is an issue. The book reviews a variety of existing efforts to understand, 'map' and evaluate the effectiveness of integrity policies and institutions, not just in the government sector but across all the major institutions of modern society. 'Integrity' is used in this book to mean, for the most part, the opposite of 'corruption' in public life. The English word is derived from the Latin *integritas*, meaning 'unaffected, intact, upright, reliable'; the same root has given us 'integer', the mathematical term for a 'whole' as opposed to fractional number (KCELJAG and TI 2001, 1; Uhr 2005, 194). Corruption, on the other hand, means decay, deterioration or perversion from an original or 'whole' state – physically, 'the destruction or spoiling of anything, especially by *disintegration* …' (*Oxford English Dictionary*; Heidenheimer and Johnson 2002, 6–9). Some of its internal conflicts have been well documented (Philp 1997; 2002, 53–4).

For our purposes – in the context of governance, politics, law and public policy – corruption refers to the corrosive threats posed to society by the abuse of entrusted power (see Brown 2006b). Conversely, when powerful individuals and institutions act in a manner that is true to the values, purposes and duties for which they have been entrusted that power, or allowed to continue to hold it, then we tend to say they have integrity. Truth and honesty are not synonyms for

integrity, but are elements of it; as one Canadian integrity commissioner said, 'the virtue of integrity … includes honesty, together with worthiness, respect and an expectation that a promise made will be kept, absent some factor or circumstance beyond the control of the promiser' (Evans 1996, 7; see also Dobel 1999).

Our aim in this book is not just an academic one – of understanding systems – but also the practical goal of devising new ways for integrity reformers to reliably assess the relative strengths and weaknesses of the integrity regimes in place in their country. Every society already has some kind of 'integrity system', even if not widely understood, or recognized, or respected for its achievements. If there were no elements of an integrity system in place, then social and political order itself would collapse. The question is, what are the weaknesses and gaps in each integrity system, and how are they best addressed, in the effort to ensure that those people entrusted with political and economic power exercise it in accordance with the values and purposes for which they hold it? This is a much harder question – one which relies on a practical ability to see the 'integrity system' as a whole, and then evaluate what is working and what is not, in the search for a reliable road-map towards successful reform.

While the book has been assembled by Australian researchers, and contains considerable Australian material, the scope of the underlying project and the lessons arising are much more global. The book arose from an acknowledged lack of *practical* methods for describing and assessing modern integrity systems in all their complexity, right around the world. The research underpinning it was conducted in partnership with Transparency International, which from the mid-1990s was one of the first organizations to point out, in its international 'Sourcebooks' (Pope 1996; 2000), that the long-term success of integrity and anti-corruption depends on holistic rather than piecemeal reform. Previously, the search for higher standards – or at least appearances – of integrity saw many nations vigorously borrow and adapt institutions from one to another, in some cases establishing one single new 'anti-corruption law', or one single new 'anti-corruption agency', as a simple response to various drivers for change. In articulating the concept of a 'national integrity system' (NIS), the founding director of Transparency International, Jeremy Pope, sought to demonstrate that the task of building a robust framework of integrity into social institutions involved many more elements and a greater diversity of strategies (Pope 1996; 2000; Langseth et al. 1997; see also Stapenhurst and Kpundeh 1999).

In Chapter 2 of this volume, Pope renews and explains the rationale for this broader concept of an integrity system, including a restatement of his famous structural analogy of modern integrity systems as akin to an ancient Greek temple, emphasizing the many building blocks that go to make up its foundations, and the many different institutional pillars needed to keep it upright (see Figure 2.1). This more multi-pronged approach to integrity reform was consistent with the experience of many of Transparency International's growing number of country chapters. However, according to Pope himself, it had also been demonstrated by reforms in Australia from the late 1980s to the early 1990s – particularly the substantial overhaul of public institutions conducted in the state of Queensland in response to the Fitzgerald Commission of Inquiry (1987–1989). What began

there as a limited inquiry into police corruption, resulted in wide-ranging recommendations about the reforms needed to much larger systems of political and official accountability if such corruption was to be prevented from recurring. As stated by Commissioner Tony Fitzgerald QC, there was 'no purpose in piecemeal solutions, which only serve to conceal rather than cure the defects in the existing system' (Fitzgerald 1989, 14; see Prasser et al. 1990; Finn 1994). The result was deliberate reconstruction of public institutions in the shape of, as Pope put it, an overall 'integrity system', a process whose outcomes have already been described in the background to the present project (KCELJAG and TI 2001; Preston et al. 2002).

Looking around the world, Pope and Transparency International observed the need for a similarly strategic approach in other jurisdictions, and the readiness of TI chapters to support and pursue it. Accordingly, in 1999, an international effort commenced to establish how modern integrity systems could best be described and evaluated, in order to extend this kind of strategic, multifaceted approach to the strengthening of integrity institutions. Much of this effort was focused in Australia, where Pope's observations and other international interest resulted in a five-year National Integrity System Assessment (NISA) of Australia, led by Griffith University, and supported financially by Transparency International Australia, the Corruption Prevention Network of New South Wales (NSW) and the Australian Government through its Australian Research Council. In parallel, a large number of smaller national integrity system 'country studies' were conducted in Europe, Asia and the Americas by British researchers, and in the South Pacific by a separate Australian National University team. All this focus on 'national integrity systems' took place alongside a variety of other international efforts to better evaluate systems of governance and accountability, undertaken or sponsored by a range of organizations from the World Bank to the Washington-based Center for Public Integrity. Most relevantly, the Organisation for Economic Cooperation and Development (OECD 2005) has undertaken an important project on the ways in which OECD member-countries could assess their various measures for promoting integrity and preventing corruption. As discussed below, this project drew extensively on the Australian research.

The result of this international activity was a strengthening of the ways in which the evaluation of 'integrity systems' is conceptualized and undertaken, and an enrichment of the practical experience of many bodies and organizations in doing so. However from the outset, all such efforts necessarily encounter an innocent but fundamental question – what *is* the 'integrity system' we are trying to understand and strengthen? In Chapter 3, this question is addressed by A.J. Brown, who coordinated the Australian national integrity system assessment in 2003–2005 (Brown et al. 2005). Reviewing the different institutions and strategies that form the focus of assessment methodologies around the world, Brown argues the importance of understanding the drivers and recognizing the limits of any given assessment process, and of adopting a clear conceptual framework for what is being assessed. In different nations and cultural settings, it is particularly important to understand whether the 'integrity system' is simply an alternative term for a desired form of liberal democratic political order, or a description of

specific institutions and policies within a given system of governance, democratic or otherwise. For the most part, the concepts of accountability that underpin the definition of integrity outlined above, are intrinsically related to Western liberal democratic ideals, and their relevance and transferability across national and cultural boundaries need to be weighed accordingly. Nevertheless, the search for a clear understanding of an 'integrity system' helps place this book in its international context. It also has practical importance for how the task of integrity system assessment might be most safely addressed.

Assessing Integrity Systems in Practice

The second part of this book outlines many of the practicalities of institutional strengthening that can flow from effective evaluation, providing accounts of specific methods used to assess integrity systems as part of the international effort. In Chapter 4, Alan Doig and Stephanie McIvor describe the process they used to study the integrity systems of 18 countries, in 2000, using an institutional template based directly on the Transparency International 'national integrity system' concept. The results tend to confirm that public integrity is indeed reliant on a multiplicity of institutions and strategies, and confirm that an increasing array of countries use a similar web of these institutions and strategies in their integrity-building efforts. In many settings, the gaps and weaknesses suggested by this relatively simple form of comparative analysis have equipped reformers with a clearer view of where explanations for problems might lie, or where efforts to strengthen integrity institutions might yield quickest results.

Chapter 5 outlines the similar effort to study the integrity systems of 14 Pacific Island Nations, in 2006. Peter Larmour arrived at similar conclusions but also identifies some of the more fundamental issues thrown up by these country studies. On one hand, as Transparency International has noted, these studies have borne out the accuracy of the concept of the 'national integrity system' as a means of explaining many countries' approaches, typically finding that 'most countries had nearly all the pillars [of the integrity system] and few had additional or different pillars' (TI 2001, 39). On the other hand, as TI feared and Larmour's studies confirm, there is a problem that even when these 'pillars' are present, they are sometimes merely facades or 'hollow' (Larmour and Barcham 2004, 29; TI 2001, 16, 27). While a comparative analysis of the presence or absence of institutions can do much to assist policymakers and reformers, it may do little to explain *why* things are as they are, or *what is needed* to fix particular perceived gaps or weaknesses in the system. Answers to these questions rely on a deeper analysis.

The remaining chapters in this part show the evolution of some of these deeper evaluative methods in the Australian setting. By no means does Australia provide a model of integrity in public life, whatever its relatively positive ratings on measures such as Transparency International's corruption perception index. Rather, as found by the Democratic Audit of Australia (Hindess 2004) and suspected by Transparency International Australia (Costigan 2005), Australia might be regarded as a country whose apparently low level of official corruption

seems to be due in part to ongoing responses to accountability scandals that have tended to maintain public vigilance on the issue.

As explained above, an early phase of the Australian research effort involved a detailed description of the public sector integrity system of the state of Queensland (KCELJAG and TI 2001). While more detailed, this description was largely consistent with the country study approaches in Chapters 4 and 5. In parallel, however, a pioneering effort was made to analyse the presence of integrity systems in the private business sector – an area of the national integrity system that had been largely ignored. Chapter 6, by Joel Lucas and David Kimber, describes the results. The recommendations of the final NISA report included the need to continue this work, and in particular, to study strengths and weaknesses in the contribution made by business regulatory agencies to integrity in public life (Brown et al. 2005, 40–43, 102). Nevertheless, this '*business* integrity system assessment' showed why a proper review of integrity systems must not simply examine large-scale laws and institutions, operating right across society, but the everyday realities of organizational culture and practice – that is, the role of integrity in the lives of individual businesses. Indeed, as Lucas and Kimber show, it is also vital to recognize personal integrity as a dimension of these systems (see Figure 6.1). Their analysis emphasizes that identifying and responding to an integrity system's 'hollow' pillars requires us to look behind the template of major or 'core' integrity institutions and to examine the 'distributed' integrity systems extending throughout the great number of organizations – public and private – that employ the nation's workforce and determine the quality of daily life. For reformers, this deeper examination also indicates the importance, for the system as a whole, of understanding the relationships between 'core' (for example, regulatory or oversight) institutions and the integrity practices of everyday businesses and agencies.

In Chapter 7, Rodney Smith deals squarely with this question of relationships – one of the most vital questions in any understanding of an integrity system. From the very outset, the realization that integrity programs depend not just on one or two institutions, but a multiplicity, demands closer study of the ways in which these work together – or fail to work together. As just noted, this is not simply a theoretical question. If integrity systems at an organizational level are not reinforced or supported by the actions of integrity agencies, they are liable to fail. And if there is a plethora of integrity bodies, how they can best work together should be a live issue in administrative practice. The Australian state of New South Wales has, in its state government, the largest number of integrity bodies of any Australian governmental jurisdiction, and perhaps any jurisdiction in the world. Smith's mission, within the framework of the Australian national integrity system assessment, was to map this complex system and gather evidence from among participants about the strengths and weaknesses of its internal interactions. The intricacy of this picture has been central to suggestions that a well-developed integrity system is perhaps better understood as a messy, organic structure such as a bird's nest, rather than Pope's stoic analogy of a Greek temple (Sampford et al. 2005). The practical challenges of maintaining the coherence

of such a system also provide important worldwide lessons, as discussed in this book's concluding chapters.

Chapters 8, 9 and 10 go on to analyse, from different perspectives, the state of the integrity system at the level of Australia's federal (national) government. In Chapter 8, Peter Roberts reports on this component of the Australian national integrity system assessment project. As well as reinforcing the need for action to restore the coherence of the system at this level, his analysis emphasizes the need to take account of issues of organizational and political culture, and reviews some of the evidence of a lack of capacity in certain areas of the Australian federal government's approach. Like Smith's analysis, these findings found their place in the formal recommendations arising from the NISA assessment (Brown et al. 2005, 31–6). However, they also resonate with others' findings regarding a weakening in the culture of public accountability at Australia's federal level, whether discussing specific lapses in public honesty by political leaders (Weller 2002) or the 'puzzling' self-regulatory system (Uhr 2005, 147) on which the integrity of federal parliamentarians' conduct continues to rely, by comparison with other jurisdictions.[1]

The most notable example of integrity failure on the part of Australian institutions, in recent years, concerns the payment of around US$222 million in illegal 'kickbacks' to the government of Iraq by the Australian wheat export company AWB International Limited, in breach of the United Nations sanctions regime in 1999–2003. This saga of deceit and omission, only fully uncovered after a Royal Commission, is reviewed by Stephen Bartos in Chapter 9. The institutional failures that permitted the corruption to occur, the absence of a vigilant political culture, and a limited institutional capacity for rapid detection and rectification, provide further demonstration of the types of systemic difficulties discussed in the earlier chapters.

Chapter 10 presents a detailed examination by A.J. Brown of the institution-building choices faced by governments – in particular, Australia's national government – as political leaders struggle to respond to such pressures. Using evidence from a comparative analysis of key institutional capacities in different jurisdictions, the chapter demonstrates the ways in which integrity system assessment can help provide an objective basis for judgement as to the extent of the perceived 'hollowness' of particular integrity pillars, while also reviewing a contemporary debate over the creation of a broad and effective anti-corruption commission at Australia's federal level. This unresolved debate, directly informed

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1 The recently elected Australian Prime Minister, Kevin Rudd, has announced that ministers' shareholdings and their employment after leaving office will be restricted under new transparency measures. The new ministerial code will place a 12-month ban on departing ministers having business dealings with MPs, public servants or defence personnel on any matter they dealt with in their official capacity. The code is also set to curb influence-peddling by political lobby groups. Lobbyists will be forced to disclose their details on an online public register, kept by the Department of Prime Minister and Cabinet, before seeking meetings with ministers or parliamentary secretaries. (Anderson and Morris 2007, 6)

by the recommendations of the NISA assessment project, highlights that even industrialized countries with well-entrenched democratic institutions can battle to find the right mix of integrity institutions.

A Best Way to Assess Integrity Systems?

All of the issues raised by these efforts in integrity system assessment provoke an obvious and persistent question – is there a 'best way' for such evaluations to be undertaken, if they are to have the best chance of yielding results that are both empirically accurate and politically cogent in the quest for effective reform? The third part of the book returns to the methodological choices thrown up by many earlier chapters.

Chapter 11 provides a concrete example of just some of these measures. Colleen Lewis and Tim Prenzler review the state of existing performance indicators for the independent agencies charged with ensuring the prevention and detection of corruption in which performance is being measured. No single measure, or even group of measures, provides an objective demonstration of the effectiveness of an agency in preventing corruption or effectively adjudicating allegations of misconduct, but at least it provides a starting point. Expanding on other areas where performance information is known to exist, chapter 12 presents a comparative review of organization-level integrity assessment tools compiled by Arthur Shacklock and others involved in the Australian national integrity system assessment project. This review brings much of the discussion of the Australian assessment full circle, by emphasizing that organizations – both public and private – can and do try to measure the effectiveness of their own internal integrity systems by collecting a range of evidence about the state of their own organizational culture. These tools thus provide both a rich resource for organizational managers, interested to establish whether their own integrity efforts are working, and a reinforcement of the types of evidence that, if collected on a larger scale, can also help determine whether societal programs of accountability are achieving their desired traction in the day-to-day operations of institutions and citizens' lives.

Chapters 13 and 14 begin to draw the book to a close, returning to the broad question of how best to approach the task of integrity system assessment. In Chapter 13, an analysis originally prepared for the OECD (2005, 75–122), Gilman and Stout review a number of efforts recently undertaken around the world. While they confirm that the art and science of integrity system assessment is in its relative infancy, they vigorously challenge assumptions that a more holistic evaluative approach is impossible, and reinforce the call for evaluation measures to become part of ongoing operational processes and be regarded as a natural part of program management. Gilman and Stout also oppose the idea that 'one size' can ever fit all needs in national efforts to assess integrity systems, but endorse the idea of a toolkit of evaluation instruments capable of being modified for use in a variety of settings.

Chapter 14 draws on the research and lessons described in many of the preceding chapters, to suggest just such a toolkit. In a retrospective look at integrity system assessments to date, A.J. Brown and Brian Head set out a threefold approach taking in evidence-based examinations of the 'consequences, capacities and coherence' of the various core and distributed institutions that make up a modern integrity system. This approach – which was tested in the Australian context and informed the OECD's development of a generic framework for integrity system assessment – goes beyond that framework to suggest a flexible assessment methodology with a concrete focus, adaptable to a range of settings. Moreover, the 'consequence, capacity, coherence' model provides an ability to more comprehensively track the evolution of a country's integrity system over time, providing the longitudinal information on which to build the consensus needed to support continual improvement and reform.

Whither Integrity Systems?

The analyses in this book are intended to contribute to debates about evidence-informed policymaking for the improvement of integrity systems. As Brian W. Head argues, it is unclear whether the great surge of interest in integrity strengthening and values-based governance over the last decade will be sustained by policymakers and integrity reformers around the world. The outcome may depend on whether the political will for reform is sustained and can be reinforced by international funding agencies. However, in an age of instability and heightened national security issues, the need is even greater for all societies to ensure that their integrity systems are well-coordinated and capable. Unless we demonstrate the need and benefits of change, practical measures that can lead to positive improvements in public trust and accountability, and tools for open and ongoing monitoring, we might find that the recent advances in integrity system understanding and reform will not be further institutionalized.

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Chapter 2

National Integrity Systems: The Key to Building Sustainable, Just and Honest Government

Jeremy Pope

> What is government itself but the greatest of all reflections upon human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.
>
> (James Madison (1751–1836) 4th President of the USA)

Background

Creating the Foundations for Integrity in Public Life

It is often overlooked that, at the beginning of the 1900s, industrialized countries such as Canada, the United Kingdom and the United States of America were deeply corrupt. In the United Kingdom, despite a well-paid, efficient and largely honest civil service, corruption was rampant in almost every other sector. In the private sector, cartels abounded whereby the public quite literally was held to ransom. Political patronage abounded. An editorial in *The Times* had complained that headmasters were taking bribes from publishers for school text-books. Clergymen were even taking kickbacks on sales of hymn books. In response, anti-corruption groups sprang up and these proved to be the trigger for reforms which have helped lay the basis for some of the world's most successful economies.

Legislation in Canada, the United States and the United Kingdom, for example, dates back to the end of the nineteenth century, when all three suffered many of the less attractive features of today's developing economies. It was not that policymakers in these countries necessarily had a very clear concept of what they were trying to achieve, or of where their reforms would ultimately lead. The measures introduced were piecemeal, not comprehensive.[1]

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1 In the US, for example, the law was developed progressively. First, the Sherman Act of 1890 rendered conspiracies in restraint of trade a criminal offence, but it recognized no role for the state in actively regulating what was taking place (Canada had done so a year earlier, in 1889). Then came the Clayton Act of 1914, still the primary tool for the control of anti-competitive mergers and joint ventures in the US. At the same time, the

Today, the ethical standards of the political leaders of these countries – among many others – are under sustained attack. Nevertheless, the systems of governance that have emerged – of checks and balances operating under the Rule of Law – have provided the basis for effective modern administration. What have emerged are functioning national integrity systems.

How, then, can developing countries and countries in transition – many in the grip of corruption – achieve such a change?

Although the early anti-corruption work on national integrity systems has focused on a mix of institutions, laws and practices, it is now clear that the ethical framework demands much more attention than has been appreciated. As James Madison remarked (as quoted above): 'If angels were to govern men, neither external or internal controls on government would be necessary'.

Thus, the relevance of what Charles Sampford has called an 'Ethics Regime' becomes of at least equal importance to reforms of institutions, laws and practices. By placing ethics at the forefront of the reform process, public servants come to appreciate the 'why' that lies behind a rule, and to appreciate the benefits for society of the existence of a stick with which to enforce it. Intuitively we all know that there has not been a system yet devised that cannot be outwitted by the corrupt, but the compelling need in many countries is to move from a situation where corruption is systemic to one in which it is simply episodic.

An effective ethics programme at the forefront of the reform process also helps build local ownership and commitment. Many of those working in the field of development are coming to realize that the impetus for a reform programme has to be home-grown and home-owned for it to be sustainable. There have been far too many examples of donors trying to impose anti-corruption programmes on countries as a precondition for aid, but none can be regarded as having contributed more than the most incremental of change.[2]

Federal Trade Commission Act created the Federal Trade Commission and so introduced the element of active regulation. These countries, and other developed economies, are constantly modernizing their legal framework, the United Kingdom as recently as in 1998, with its Competition Act. See the concluding discussion in the chapter on the role of the private sector in the *TI Source Book* (www.transparency.org) for a discussion on how civil society actively generated anti-corruption reform. Once anti-bribery legislation was passed in the UK in 1906, a number of its supporters formed an NGO, the Secret Commissions and Bribery Prevention League of which 'practically all the leading bankers, merchants and traders' were members. The League monitored implementation of the new law, often bringing prosecutions itself. This, coupled with the stiff sentences the judges gave to the convicted, brought about a discernible change in attitudes. A similar Anti-Bribery League was established in Germany.

2 For example, the previous insistence that the Government of Kenya establish an independent anti-corruption bureau. The institution was set up and its first victim was a senior official who many had seen as one of the most outstanding and honest in the administration. By placing him under investigation he was suspended from his post, to the relief of many. It may be the case that in time this will be developed, as a result of internal political pressures, in to an effective institution. However, its initial performance was, not surprisingly, lamentable.

The irony is that while ethics regimes are desperately needed in developing countries, it has been a number of developed countries – Australia, Britain, Canada and New Zealand among them – and the OECD itself who have recognized the prime importance of the ethics dimension, and who have been working on it studiously.

Gerald Caiden has remarked that:

> Corrupt officials, knowingly or not, display contempt for other people, no matter how minor or seemingly innocent their corrupt acts. This contempt harbours within it the seeds of megalomania that, if allowed to flourish, will eventually blossom into grosser and grosser acts … where other people are considered expendable and other people's lives are considered meaningless and useless. All corruption is a deceit, a lie, that sacrifices the common good or the public interest for something much less … [I] it gives comfort to social pathologies that divide, destabilise and desensitise. Not only does it point society in the wrong direction, but it also exhausts governmental legitimacy, supports the wrong kind of public leadership and sets the wrong kind of example for future generations. (Caiden 1988, 17)

What, then, is the 'right' direction? The First Report of the Committee on Standards in Public Life (the Nolan Committee) (1995) provides a starting point with its articulation of seven principles which it saw as applying to all aspects of public life:

- Selflessness: holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- Integrity: holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.
- Objectivity: in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices based on merit.
- Accountability: holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness: holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- Honesty: holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership: holders of public office should promote and support these principles by leadership and example.

Together, these elements foster a tradition of ethics in relation to public life and an ethical environment in which politicians and officials are generally assumed to

be honest. Within such an environment it is also assumed that the laws and means of detection and investigation are sufficient to make it risky and costly to break the rules, accept bribes or become involved in fraud (Doig 1994, 4). However, it is important to bear in mind several crucial points:

- the ethical environment must be owned, enforced, adapted and applied equally and consistently across the public sector;
- the ethical environment must be self-sustaining and integrated; if the ethical environment has potential weak points, new means of accountability must be introduced, or existing means upgraded and reinforced to counter these weaknesses;
- the ethical environment requires political commitment and leadership to inspire confidence and trust, but it should not always be the politicians who have the responsibility to own and enforce it; and,
- the ethical environment depends on micro-level changes (the details of reform) in order to deal with the consequences of failure.

Failure can result in: weak guidance on standards of conduct or poor compliance with procedures; management indifference or ignorance; aggregated decision-making powers; inadequate financial and management information systems; lax working practices; poor staff relations; sub-organizational autonomy; poor recruitment and training policies; and little or no attempt to control, monitor or police the increasing contact with private sector values, practices, personnel and procedures (Doig 1994, 7–8). Before discussing the advantages of the national integrity system approach, it is instructive to consider why other approaches to containing corruption have largely failed.

Why Reform Efforts Fail

Despite the flurry of activities around the globe in the last decade, the would-be reformer of corruption can still be at a loss to know where to begin. History is littered with the pretence of reform – grandiose promises and a conspicuous inability to even try to deliver.[3]

In other cases the intentions are genuine: newly elected leaders arrive determined to clean up corruption, but are quickly overwhelmed by the size of the problems facing them. Yet others simply posture, making speeches, signing laws – all in the absence of any expectation that meaningful change will follow. Some enact reforms and then privately flout them.[4]

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3 An example is the former President of South Korea, Roh Tae Woo. He vowed at his inauguration to be the cleanest President in his country's history but wound up in prison, facing a host of major corruption charges: *The Washington Post*, 18 November 1995.

4 Former German Chancellor Helmut Kohl made great play of reforms designed to contain the problem of illicit political party funding, only for it to be revealed that his subsequent behaviour was wholly contrary to everything he claimed to believe in.

Time and again, optimistic electorates have returned governments pledged to confront corruption firmly and effectively. Governments have fallen when they have demonstrated an inability to counter the phenomenon; others have been elected in the hope that they can do better. Yet, very few can point to enduring progress. Not only must there be change, but it must be change which is sustainable.

An added difficulty in developing countries and countries in transition is the inherent weakness of government itself. Some countries are having to 'invent' government completely, rather than to 're-invent' it. The process of transition and of building democratic institutions of accountability clearly takes a long time to mature, as a generation of actors has to adapt to a new and alien political environment and to forge wholly new relationships between the executive, the legislature and the judiciary. We cannot expect this to happen quickly.

An analysis of the failure of past efforts has identified a number of causes, including the following:

- the limits of power at the top. An incoming head of state may endeavour to address the challenge, but is effectively impeded by the existing corrupt governmental machinery;[5]
- the absence of commitment at the top. Lower ranking political and administrative figures may wish to effect change but be severely restricted by an absence of commitment at the leadership level;
- reforms tend to overlook those at the top and focus only on the lower political and administrative levels, based on the assumption that those at the top either do not 'need' reform or that they would be openly hostile towards anyone who attempted it. As a result, the law is seen as being applied unevenly and unfairly, and soon ceases to be applied at all;
- overly ambitious promises leading to unrealistic and unachievable expectations. Those who promise what they cannot deliver, quickly lose the confidence of those around them;
- reforms lack a specific and achievable focus and so fail to deliver concrete change;
- reforms have taken place piecemeal and in an uncoordinated manner, leading to lack of ownership and commitment to effective implementation (Benson 1988, 149);[6]

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5 Witness President Mkapa of Tanzania who, on his election in 1995, publicly declared his assets and those of his spouse, and called on other leaders to follow his example. The Attorney-General issued a public statement that many interpreted as implying that the President's actions were 'illegal' (in that they were not required by law) and that it would be improper for other leaders to follow suit.

6 'The rotten apple in the barrel ….' The Knapp commission, which investigated corruption in the New York Police Department, concluded that 'the interaction of stubbornness, hostility and pride has given rise to the so-called 'rotten apple' theory. According to this theory, which bordered on official Department doctrine, any policeman found to be corrupt must promptly be denounced as a rotten apple in an otherwise clean

- reforms have relied too much on the law, which is an uncertain instrument in trying to change the way people behave, or too much on enforcement, which can lead to repression, abuses of power and the emergence of another corrupt regime. If a legal system is not functioning, the problem is more likely to lie in the judicial system (with delays, corruption and uncertainties) rather than in the letter of the law itself. If existing laws are not working, it is hardly likely that a new one will have impact;
- institutional mechanisms are not implemented. Even where reform efforts are real, there still need to be institutional mechanisms to carry reforms forward after their initial champions have passed from the scene. The classic case is that of Justice Plana in the Philippines who reformed the tax administration, raising its ability to implement tax collection fairly and effectively, but as soon as he was promoted out of his post, the reforms began to unravel (Klitgaard 1988);[7] and
- a weakening of civil society on a radical change of government. When radical political change takes place, as for example, in Georgia and South Africa, frequently civil society leaders are catapulted into government and quickly learn not to listen. At the same time, civil society has to undergo a sea change; from a stance of opposing the government to a position of constructive dialogue and democratic debate. Paradoxically, civil society, which many trumpet as being part of the solution, can, in fact, be crippled just at the moment when its role is potentially at its most powerful.

Reform must also face a host of vested interests: all those who have been bending the rules, whether to supplement meagre incomes or to pad well-filled foreign bank accounts, are potentially at risk, and so are threatened by the prospect of an anti-corruption drive.

In many situations the power of vested interests is such as to be able to derail reforms; indeed, in some cases these are so powerful, or so determined, that they can resort to violence. The potential dangers to reformers in such countries are real. The changes inherent in a comprehensive overhaul of a country's integrity system may be considerable, and call for special political and managerial skills. The conduct of parliaments can also be quite outrageous, for example, refusing to remove areas of corruption in which parliamentarians personally benefit.[8]

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barrel. It must never be admitted that his individual corruption may be symptomatic of underlying disease. Quoted in Benson, 149.

7 The case is described as an example of successful reform in Klitgaard (1988).

8 See, for example, the refusal by the Brazilian Parliament to outlaw nepotism. President Obasanjo's difficulties in 1999/2000, in having anti-corruption legislation enacted in the Nigerian National Assembly, were considered by some observers, at least in part, to be the result of some legislators feeling themselves to be at risk. There, the legislature voted itself large sums of money for its members to spend, effectively converting a 'watchdog' into a 'burglar', and destroying the healthy tensions that should exist between any legislature and an executive.

Why 'Vertical Accountability' by itself Fails

In a democracy, there are two forms of accountability at work: 'vertical accountability' by which the electors, the governed, assert control over the governors and 'horizontal accountability' where those who govern (the governors) are accountable to other agencies (the watchdogs).

In principle, the governors and the governed are alike. There is no special group with political power. Political power is vested by the people themselves in chosen representatives, for a limited period of time. If the people are dissatisfied, they can remove those in power, either through the ballot box or through demanding their resignation or punishment (Fontana 1997).

However, throughout history, mere 'vertical accountability' has proved inadequate to the task. If the governors cannot achieve re-election through support of a satisfied populace, they achieve it through a combination of secrecy (so that the electors are unaware of what is transpiring) and the building of systems of patronage. The governors may also indulge in short-term populist acts, which may be to the longer-term detriment of the public. Not only will politicians tend to stretch the limits of their power and authority so as to govern with as little opposition as possible, but in some cases they will multiply their interventions simply to prove their own importance.

Moreover, the political class, which emerges with 'professional' politicians, often shares a set of values largely at odds with the democratic ideal, and promises made whilst in opposition, as we know, are all too frequently in stark contrast to their actions on assuming power. For example, in 1997 the Labour government came to power in the United Kingdom with strong pledges to end official secrecy. Their subsequent reforms were steadily watered down, to the point where some observers argue that the resulting reforms, far from making the government more transparent, could actually increase areas of secrecy.

The ancient democracies recognized and struggled with these contradictions. In Athens, in ancient Greece, the People's Court, formed by a randomly-selected group of citizens sat in judgement on public controversies and had the power to reverse decisions of the legislative body, the People's Assembly (Hansen 1991).[9] Similarly, in ancient Rome, the right of the citizen to appeal to the tribune of the plebs against decisions of the magistrates was seen as a cornerstone of liberty (Nicolet 1976). Both systems were democratic, as they were exercised by citizens, and were characterized by horizontal accountability, as the popular courts were effectively autonomous and independent political bodies. Much the same can be said of traditional societies in sub-Saharan Africa and elsewhere.

By contrast, in ancient China, the later Roman empires and the old European monarchies there emerged a bureaucratic class. This, in its time, served as a buffer between the people and the governors. When the bureaucrats' sensitivities were

9 The court could vary from a few hundred citizens to over 2,000, depending on the importance of the matter in issue. Jurors were chosen by lot. The cases were argued by supporters and opponents of the measure in question. People were expected to argue their own case and the employment of professional speakers or advisors was prohibited.